

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE

CIVIL APPLICATION ST.NO.13101 OF 2006
IN
LETTERS PATENT APPEAL NO.36 OF 2006
IN
WRIT PETITION NO.6039 OF 2003

Mrs.Ratnamala Bapurao Kadam .. Applicant
v/s.
Yeshwant Ghatgenagar Co-operative
Housing Society Limited, Pune and others .. Respondents.

Mr.Rajiv Patil for the applicant.

Mr.S.K.Jain with Ms.Naina Desai for original respondent No.2.

CORAM : R.M. LODHA &
A.S.BAGGA, JJ.

DATED : 12TH JUNE, 2006.

P.C.

Pursuant to our order passed on 5th June, 2006, the appellant has made the application on 9th June, 2006 seeking leave of the court to amend the Letters Patent Appeal as per schedule Exhibit 2 and for grant of permission to the petitioner to replace Exhibit 'B' by filing correct copy of the writ petition. According to the petitioner, due to bonafide mistake on her part, incorrect copy of the writ petition was annexed and all the parties which were arrayed in the writ petition left to be impleaded as parties in the appeal.

2. Mr.S.K.Jain, advocate for Shivajirao R.Shinde opposed the application. He submitted that non-impleadment of his client Shivajirao R. Shinde as party respondent in the appeal was intentional to seek an order at the back of the said party. He,

however, left the matter to the court and submitted that since the mistake was not bonafide, the court may consider imposition of cost on the applicant-appellant.

3. Mr.Rajiv Patil, counsel for the applicant-appellant was not averse to the imposition of cost.

4. Though we are not satisfied with the explanation given by the appellant in the application that the mistake was bonafide but since the appellant has tendered apology, we are satisfied that the application made by the appellant may be granted on payment of cost of Rs.5000/-. The award of cost shall compensate the inconvenience caused to Shivajirao R.Shinde who was arrayed as respondent No.2 in the writ petition.

5. We, accordingly, dispose of the application by the following order.

- i) Subject to the payment of cost of Rs.5000/- by the appellant-applicant to Shivajirao R. Shinde (respondent No.2 in the writ petition) within two weeks from today, the application shall stand granted in terms of prayer (a).
- ii) If the cost is paid within the aforesaid time, the appellant shall also carry out the amendment in the Letters Patent Appeal as per schedule Exhibit 2 and also replace

Exhibit `B' within two weeks from today.

iii) Office shall place the appeal for admission as soon as the amendment is carried out in the appeal.

6. It is clarified that in the event of the cost being not paid by the appellant to Shivajirao R. Shinde (original respondent No.2 in the writ petition) within two weeks from today, the civil application as well as Letters Patent Appeal shall stand dismissed without reference to court.

(R.M.LODHA, J.)

(A.S.BAGGA, J.)